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No. 91-885

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

STEVEN L. EASLEY,
Petitioner

v.

SOUTHERN SHIPBUILDING CORPORATION,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Respondent, Southern Shipbuilding Corporation, disagrees with Petitioner's statement of the questions presented for review. The questions presented for consideration are:

1. Whether the United States Court of Appeals for the Fifth Circuit and the district court correctly applied the proper legal standards for determining seaman status under the Jones Act, 46 U.S.C. § 688, consistent with this Court's recent opinions in *Southwest Marine, Inc. v. Gizoni*, 502 U.S. ——, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991), and *McDermott Int'l, Inc. v. Wilander*, 498 U.S. ——, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991)?

2. Whether summary judgment dismissing Petitioner's Jones Act and general maritime law claims was appropriate, where no genuine issue of material fact existed and where the courts below applied the proper legal standards concerning Petitioner's job status?

LIST OF INTERESTED PERSONS AND RULE 29.1 CERTIFICATION

The parties to the proceeding below were Petitioner-Plaintiff, Steven L. Easley, Suzanne Easley (his wife), and Respondent-Defendant, Southern Shipbuilding Corporation.

Under this Court's Rule 29.1, Respondent, Southern Shipbuilding Corporation, certifies that it has no parent companies and no subsidiaries.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Southern Shipbuilding Corporation ("Southern"), submits that there is no basis for granting a writ of certiorari in this case. Recently, in *Southwest Marine, Inc. v. Gizoni*, 502 U.S. ——, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991), and in *McDermott Int'l, Inc. v. Wilander*, 498 U.S. ——, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), this Court clarified the tests for defining who is a "seaman" entitled to state a cause of action under the Jones Act, 46 U.S.C. App. § 688, and for granting summary judgment on seaman status. Consistently with *Gizoni* and *Wilander*, the courts below in this case applied the proper legal standards and correctly deter-

mined that no reasonable factfinder could conclude that Petitioner was a Jones Act seaman rather than a shipbuilder or ship repairer limited to compensation remedies under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901, *et seq.* The decisions of the court of appeals and the district court neither raise any unsettled issues warranting this Court's attention, nor conflict with any decision of this Court or any United States Court of Appeals. Petitioner has presented no compelling reason for granting certiorari to review a carefully reasoned summary judgment squarely within the controlling law.

STATEMENT OF THE CASE

Petitioner's statement of the course of proceedings and disposition below at pages 2-3 of his writ petition correctly recounts the procedural history of this case. However, Respondent restates the pertinent facts as follows:

A. The Undisputed Facts

The relevant facts, all of which are uncontested, are fully set forth in the decisions of the district court and the Fifth Circuit reproduced as appendices to Easley's writ petition. Southern Shipbuilding Corporation operates a shipyard in Slidell, Louisiana, where it repairs and constructs vessels, in addition to performing salvage operations. Petitioner Easley, a 20-year employee with Southern, worked as a "mechanic" in the shipyard. His duties included repairing cranes and shipyard equipment, as well as cutting grass, working in the compressor room, and maintaining Southern's drydock.

In earlier years, Easley had worked as a deckhand aboard Southern's vessels, but since 1987, at his own request, he was reassigned to the aforementioned duties as a land-based mechanic. However, at the time of his accident in this case, Easley was working on a one-day assignment as a temporary deckhand aboard one of his employer's vessels, the D/B SOUTHERN NO. 6. As

Easley concedes at pages 3-4 of his writ petition, of the total 159 hours he worked in the month before his accident, he spent only eight hours on a vessel, while spending the remaining 151 hours, or approximately 95% of his time, on land as a shipyard mechanic.

Although Easley styles himself as a "regular substitute deckhand," the undisputed facts established that he had been assigned to the vessel for only a single day at the time of his injury, that his deckhand duties were only sporadic and intermittent, and that he filled in only because permanent crewmembers were unavailable. Easley presented no evidence that his permanent job assignment as a land-based worker had changed in the two and one-half years since 1987, that he received anything other than a standard wage regardless of the type of work he performed, or that he accounted for his time any differently for his minimal and random vessel-related work.

B. The District Court Proceeding

As Easley notes at pages 2-3 of his petition for a writ of certiorari, he initially filed a negligence claim against Southern under the Jones Act. The district court granted Southern's motion for summary judgment, dismissing this claim on grounds that Easley was not a seaman. In its "Order and Reasons" entered on October 18, 1990 (*see* pages A-1 through A-3 of Easley's writ petition), the district court applied the two-part test for determining seaman status set forth in *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986):

> In order to prove that he is a seaman, entitled to compensation under the Jones Act, the plaintiff must show that: (1) he was permanently assigned to a vessel or performed a substantial part of his work on a vessel; and (2) the capacity in which plaintiff performed contributed to the function of the vessel, its mission, its operation, or its welfare.

Writ petition, page A-2. Citing *Gizoni v. Southwest Marine, Inc.*, 909 F.2d 385 (9th Cir. 1990), which this Court later affirmed, the district court specifically stated

that it would "look at the nature of the work actually done by the plaintiff and not his job titles" in deciding the motion for summary judgment. *Id.*

Applying this correct statement of law to the undisputed facts, the district court concluded that Easley's assignments to his employer's vessel were "intermittent and transitory," whereas "his permanent job assignment remained land-based." *See* writ petition, page A-3. Even accepting plaintiff's assertion that he had worked 11.5% of his time on a vessel, the court found that this temporary vessel assignment was not a regular and continuous change in his normal function as a machinist in the shipyard. *Id.* Thus, even when viewed in a light most favorable to the plaintiff, the evidence could not reasonably lead to a conclusion that Easley was a seaman.

After the district court dismissed his Jones Act claim, Easley moved to amend his complaint to allege a claim in negligence under 33 U.S.C. § 905(b) and the general maritime law. Southern moved to dismiss this claim on grounds that Easley's sole remedy against his employer and its vessel was compensation under the LHWCA. Viewing the undisputed evidence again in the light most favorable to the plaintiff, the district court concluded that Easley's job of repairing cranes, working in the compressor room, and maintaining the drydock supported his employer's shipbuilding and ship repair business. Because Easley was thereby directly involved in shipbuilding and ship repair work, the court found him to be a shipbuilder or ship repairer barred by the express provisions of 33 U.S.C. § 905(b) from suing his employer or its vessel for damages under § 950(b) or the general maritime law. *See* district court's "Order and Reasons" entered on December 11, 1990 (reproduced at pages A-4 through A-6 of Petitioner's writ application).

C. The Fifth Circuit's Opinion

On July 30, 1991, the United States Court of Appeals for the Fifth Circuit affirmed the district court's rulings.

Easley v. Southern Shipbuilding Corp., 936 F.2d 839 (5th Cir.), *rehearing denied, en banc*, 943 F.2d 1315 (5th Cir. 1991), reproduced at pages A-8 through A-20 of plaintiff's writ petition. Citing this Court's decision in *Wilander*, the Fifth Circuit recognized that a maritime worker "cannot be both a seaman for Jones Act purposes and a longshoreman under the LHWCA." 936 F.2d at 842; writ petition, page A-13. The court of appeals then proceeded to analyze the undisputed facts and concluded that the district court had correctly found that Easley was a ship repairman covered by the LHWCA rather than a Jones Act seaman. The Fifth Circuit did not simply analyze Easley's job assignment in light of his LHWCA job status, but alternatively looked to seaman-status cases under the Jones Act, as well as "member of the crew" cases under the LHWCA in reaching its decision:

> If we were to analyze Easley's assignment with respect to seaman status instead of longshoreman status, we would be forced to the same conclusion even accepting the plaintiff's argument that he was a "regular" substitute deckhand. Easley's sporadic and intermittent assignments to Southern's vessels simply were not substantial in the context of his employment. Moreover, with the exception of his occasional deckhand assignments, we see nothing in the record that would distinguish any of his activities as clearly non-ship repair. . . .

936 F.2d at 844-845; writ petition, page A-18. The Fifth Circuit therefore affirmed the summary judgment, concluding that Easley was not a Jones Act seaman. Furthermore, as an LHWCA-covered worker directly involved in the shipbuilding or repair process, he could not maintain an action for negligence or unseaworthiness under the general maritime law against his employer or its vessel. 936 F.2d at 845; writ petition, page A-19.

REASONS FOR DENYING THE WRIT

I. THE DECISIONS OF THE FIFTH CIRCUIT AND THE DISTRICT COURT ARE CONSISTENT WITH THIS COURT'S RECENT *GIZONI* AND *WILANDER* DECISIONS ON SEAMAN STATUS

In *Southwest Marine, Inc. v. Gizoni*, 502 U.S. ——, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991), this Court held that a maritime worker engaged in an occupation enumerated in the LHWCA may nonetheless be a "seaman" within the meaning of the Jones Act, depending upon the nature of the work rather than the worker's job title. This Court further held that a district court cannot deny seaman status as a matter of law solely because the claimant's job title or occupation falls within one of the enumerated occupations defining an employee under the LHWCA. Nonetheless, this Court also recognized in *Gizoni* that summary judgment limiting a worker to LHWCA remedies is appropriate, if no genuine issue of material fact exists as to whether the worker is a seaman under the Jones Act. 112 S.Ct. at 492.

This Court also recently clarified the test for determining whether a party is a seaman. In *McDermott Int'l, Inc. v. Wilander*, 498 U.S. ——, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), this Court acknowledged the Fifth Circuit's long-standing, two-part analysis for seaman status in *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir. 1959), the same test set forth in *Barrett v. Chevron U.S.A., Inc.*, cited above, which the courts below applied in this case. 111 S.Ct. 809-810, 817. Under that test, a party is considered a seaman if only (1) the party is permanently attached to or performs a substantial part of his or her work aboard a single vessel or an identifiable fleet of vessels and (2) if the party's employment contributes to the function or mission of the vessel or an identifiable fleet of vessels. In *Wilander*, this Court recognized these guidelines in determining seaman status. *Id.*

This Court further recognized in *Wilander* that the purpose of the LHWCA is to remove land-based maritime workers from the scope of Jones Act coverage, while leaving sea-based maritime employees as seamen under the Jones Act. 111 S.Ct. at 813-14. In other words, the phrase "master or member of a crew" as used in the LHWCA exemption from coverage "restates who a 'seaman' under the Jones Act is supposed to be: a sea-based maritime employee." 111 S.Ct. at 814. As it had done earlier in *Norton v. Warner Co.*, 321 U.S. 565 (1944), this Court in *Wilander* again quoted with approval the following language concerning seaman status from the Fifth Circuit's opinion in *Maryland Casualty Co. v. Lawson*, 94 F.2d 190, 192 (5th Cir. 1938): "There is implied a definite and *permanent* connection with a vessel, an obligation to forward her enterprise." 111 S.Ct. 817 (emphasis added). This Court ultimately held in *Wilander*, "Whether under the Jones Act or general maritime law, seamen do not include land-based workers." 111 S.Ct. at 814.

Petitioner misstates the first question presented for review by improperly asserting that the trial court dismissed his Jones Act claim after finding that he was "an employee in an occupation specifically covered by the LHWCA." By framing his question in that fashion, Petitioner would have this Court believe that the district court and the Fifth Circuit's decisions are directly contrary to *Gizoni*. No such conflict exists.

As noted earlier, in its Order and Reasons entered on October 18, 1990 (*see* pages A-1 through A-3 of Petitioner's writ application), the district court cited the Ninth Circuit's decision in *Gizoni* and expressly stated that it "prefers to look at the nature of the work actually done by the plaintiff and *not his job titles.*" Writ petition, page A-2 (emphasis added). The district court then applied the two-part *Barrett/Robison* test for Jones Act seaman status to determine if it could be reasonably found (1) that plaintiff was permanently assigned to a

vessel or performed a substantial part of his work on a vessel and (2) that his capacity contributed to the function of the vessel, its mission, its operation, or its welfare. Writ petition, pages A-2 and A-3.

The district court's approach was entirely consistent with *Gizoni* and *Wilander*. Based on undisputed facts, the court correctly determined that plaintiff's random, brief, intermittent, and transitory assignment as a substitute deckhand did not constitute a permanent assignment to a vessel or a substantial part of his work. Writ petition, page A-3. It was only later—after it had correctly analyzed the seaman status issue and dismissed the Jones Act claim and after Easley had moved to amend his complaint to assert a vessel negligence action under 33 U.S.C. § 905(b) of the LHWCA or, alternatively, a general maritime law claim as an employee allegedly not covered by the LHWCA—that the district court determined that he was a ship repairer or shipbuilder limited exclusively to LHWCA compensation remedies against his employer. *See* district court's Order and Reasons entered on December 11, 1990 (reproduced at pages A-4 through A-6 of Petitioner's writ application).

In affirming the district court, the Fifth Circuit did rely in part on its decision in *Pizzitolo v. Electro-Coal Transfer Corp.*, 812 F.2d 977 (5th Cir. 1987), *cert. denied*, 484 U.S. 1059 (1988), holding that Easley, as "a member of an enumerated classification under the LHWCA," could not be a seaman. 936 F.2d at 845, n.7; writ petition, page A-18. In *Gizoni*, this Court effectively overruled *Pizzitolo*. Nonetheless, the Fifth Circuit's reliance on *Pizzitolo* provides no basis for granting a writ in this case. The appellate court did not deny Easley seaman status solely because he was a shipbuilder or ship repairman. The Fifth Circuit also employed the same seaman status analysis as the district court. Citing this Court's decision in *Wilander*, the Fifth Circuit noted that a worker cannot be both a seaman for Jones Act purposes and a longshoreman under the LHWCA. 936 F.2d 842;

writ petition, page A-13. The appellate court specifically analyzed Easley's work "with respect to seaman status" and reached the same conclusion as the district court, holding that Easley's sporadic and intermittent assignment as a deckhand was not substantial enough in the context of his entire employment to qualify him for seaman status under the established two-part test. 936 F.2d at 844-845; writ petition, pages A-17 and A-18.

Because the Fifth Circuit alternatively analyzed Easley's seaman status without regard to his job title, as required by *Gizoni*, and concluded that Easley was neither permanently assigned to a vessel nor performed a substantial part of his work aboard a vessel as required for Jones Act seaman status, its partial reliance on *Pizzitolo* is ultimately inconsequential. There is no need to grant certiorari, vacate the judgment, and remand this case to the Fifth Circuit for reconsideration in light of *Gizoni*. The district and appellate courts have already fully satisfied the mandate of this Court's recent holding.[1]

The courts below applied the proper legal test for seaman status, and their judgments do not conflict with any decision of this Court or any other circuit. This case simply presents no compelling or unanswered issue of law for this Court to resolve. This Court has already

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[1] Respondent is aware of this Court's recent disposition on January 13, 1992 in Nos. 90-722 and 90-596, *Campo v. Electro-Coal Transfer Corp.* and *Natl. Union Fire Ins. Co. v. Campo*, 60 U.S.L.W. 3477, vacating a judgment of the Fifth Circuit and remanding that case to the court of appeals for further consideration in light of *Gizoni*. However, the Fifth Circuit in *Campo* relied solely on *Pizzitolo* to deny seaman status to a plaintiff because he was engaged in an occupation expressly enumerated in the LHWCA. *Campo v. Electro-Coal Transfer Corp.*, 1991 A.M.C. 2657, 2658-2659 (5th Cir. 1990); slip opinion No. 89-3738 (April 23, 1990) at pp. 3-4. Here, unlike *Campo*, the Fifth Circuit, in addition to citing *Pizzitolo*, applied a seaman status analysis consistent with *Gizoni* and *Wilander*. 936 F.2d at 844-845; writ petition, pages A-17 and A-18. Thus, *Campo* is readily distinguishable and does not support a similar writ grant and remand in this case.

provided all the guidance necessary to decide this case, and the courts below have analyzed the undisputed facts and reached a result consistent with controlling Supreme Court jurisprudence. Petitioner has presented no basis for granting a writ in this case.

II. THIS COURT SHOULD REFUSE TO REVIEW A PROPER SUMMARY JUDGMENT

In his second and third questions presented for review, Petitioner is essentially asking this Court to overturn a proper summary judgment of dismissal, even though he can point to no error of law or any genuine issue of material fact that would warrant a trial on the merits. Four judges in the courts below, after examining the undisputed facts and correctly applying controlling legal standards, have already determined that no reasonable factfinder could conclude that plaintiff Easley was a Jones Act seaman.

Petitioner acknowledges that the two-part test for seaman status requires that the worker be *permanently* assigned to a vessel or perform a *substantial* part of his work on it. *See* writ petition, page 8. In this case, Petitioner clearly failed to meet either requirement. Easley admits that he was never "permanently" assigned to his employer's vessels, but only worked on them temporarily. His work aboard the D/B SOUTHERN NO. 6 was for only one day. *See* writ petition, page 6. To satisfy the requirement of "substantial work," the claimant must prove a relationship to a vessel "that is substantial in point and time and not merely spasmodic." *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067, 1074 (5th Cir. 1979). Easley's work aboard vessels was most certainly not substantial in this case, where he spent approximately 90-95% of his working hours in land-based duties. Furthermore, his vessel-related work was random and fortuitous, whereas his land-based activities constituted his permanent job assignment and virtually the entirety of his employment.

Easley further concedes that summary judgment is proper where the facts establish the lack of seaman status as a matter of law and where the record contains no reasonable evidentiary basis to support a finding otherwise. *See* writ petition, page 8. His petition for a writ of certiorari presents no compelling reason for this Court to review a proper decision entered in accordance with the recognized test for seaman status and this Court's landmark decisions on summary judgment. The undisputed facts of this case present no issue warranting this Court's attention.

In *Wilander* and *Gizoni*, this Court held that the question of who is a "member of the crew" or "seaman" is "a mixed question of law and fact." *Wilander*, 111 S.Ct. 818; *Gizoni*, 112 S.Ct. 491-492. Although this question of seaman status is necessarily fact-specific, this Court has recognized that "summary judgment or directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *Wilander*, 111 S.Ct. at 818, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251 (1986). When the underlying facts are established, and the rule of law is undisputed, the issue is whether the facts meet the statutory standard. *Wilander*, 111 S.Ct. at 818, citing *Pullman-Standard v. Swint*, 456 U.S. 273, 289, n.19 (1982). If no genuine issue of material fact exists as to whether the worker was a seaman under the Jones Act, then a maritime worker employed by a shipyard is limited to LHWCA remedies. *Gizoni*, 112 S.Ct. at 492.

In *Gizoni*, this Court held that a ship repairman who spends "*all* of his working hours aboard a vessel—even one used exclusively in ship repair work" nonetheless "may qualify as a Jones Act seaman." 112 S. Ct. at 494 (emphasis added). In *Gizoni*, questions of fact existed whether a floating platform used by a rigging foreman in his *regular* work at a shipyard was a vessel in navigation and whether the worker had a sufficient connection to the

platform to qualify for seaman status. Under those circumstances, the question of seaman status was one for the jury, where reasonable persons, applying the proper legal standard, could differ as to whether that employee was a member of the crew. Unlike *Gizoni*, this case presents no issue for the factfinder. The undisputed evidence in this case established that Easley was a land-based shipyard worker who only intermittently worked as a substitute deckhand aboard his employer's vessels. Thus, *Gizoni* does not require this Court to grant writs to review the summary judgment in this case.

Applying this Court's mandate for deciding summary judgment motions enunciated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), both the district court and the Fifth Circuit accepted as true plaintiff's assertions that he worked only 11.5% of his time on the vessel, and necessarily found that his assignment to the vessel was "intermittent and transitory while his permanent job assignment remained land-based." *See* page A-3 of Petitioner's writ application. Thus, "even accepting the plaintiff's argument that he was a 'regular' substitute deckhand," plaintiff's "sporadic and intermittent assignments to Southern's vessels were simply not substantial in the context of his employment." *Easley*, 936 F.2d 844-845; writ petition, page A-18. Under these circumstances, summary judgment was not only consistent with this Court's jurisprudence, but was mandated by it. *See Celotex*, cited above; *see also Anderson v. Liberty Lobby, Inc.*, *cited above; Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).[2]

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[2] Summary judgment dismissing Easley's Jones Act claim was likewise consistent with a long line of prior decisions in several circuits denying seaman status to shore-based workers with only intermittent relationships to vessels. *See Griffith v. Wheeling-Pittsburgh Steel Corp.*, 521 F.2d 31 (3rd Cir. 1975), *cert. denied*, 423 U.S. 1054 (1976), holding that a land-based laborer's temporary assignment to work with a barge crew for only three and three-

By arguing that he was working as a "regular substitute deckhand" at the time of his accident, Easley seeks to create a factual question of seaman status from a job title alone, rather than the totality of actual work he performed. In *Gizoni*, this Court expressly rejected that approach. *Gizoni* teaches that the proper inquiry is whether the nature of the claimant's work makes him a sea-based employee instead of a land-based worker. Easley's attempt to label himself as a "deckhand" ignores the reality of his permanent land-based job as a mechanic and raises, at best, nothing more than a "metaphysical

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quarter days of his 74 days of employment did not satisfy the requirement of a permanent connection to a vessel and, as a matter of law, did not give rise to seaman status; *Whittington v. Sewer Construction Co., Inc.*, 541 F.2d 427 (4th Cir. 1976), holding that a shore-based worker who had incidental and intermittent duties aboard a barge moored to a bridge was not a seaman; *Lormand v. Superior Oil Co.*, 845 F.2d 536 (5th Cir. 1987), *cert. denied*, 484 U.S. 1031 (1988), granting summary judgment denying seaman status to a welder who performed only 14 percent of his work activity aboard vessels; *Stokes v. B.T. Oilfield Services, Inc.*, 617 F.2d 1205 (5th Cir. 1980), granting summary judgment denying seaman status to a land-based roustabout who lacked permanent attachment to a vessel, where in his 28 work days before his accident aboard a barge, he had spent 27 days in land-based employment and only one day at sea; *Fazio v. Lykes Brothers S.S. Co., Inc.*, 567 F.2d 301 (5th Cir. 1978), granting summary judgment denying seaman status to a shore gang worker who performed no permanent duties aboard vessels, though from time to time he did perform transitory vessel repair jobs; *Labit v. Carey Salt Co.*, 421 F.2d 1333 (5th Cir. 1970), granting summary judgment denying the Jones Act claim of a shore-based worker who loaded vessels with bulk salt and who only occasionally and sporadically operated a power boat to position the vessels for loading; *Miller v. Patton-Tully Transportation Co.*, 851 F.2d 202 (8th Cir. 1988), denying seaman status to a bulldozer operator who spent only one-third of his time on water, which was not "substantial" enough a part of his work to qualify him as a seaman; *Bullis v. Twentieth-Century Fox Film Corp.*, 474 F.2d 392 (9th Cir. 1973), granting summary judgment denying seaman status to off-duty servicemen acting as temporary or transitory extras on a vessel during filming of a motion picture.

doubt" insufficient to create a genuine issue of material fact. *See Matsushita*, 475 U.S. at 586.

The undisputed facts in this case, even when viewed in a light most favorable to the plaintiff, establish that Easley was a land-based shipyard mechanic who neither had any *permanent* attachment to a vessel nor performed a *substantial* part of his work on a vessel. Accordingly, he failed to carry his burden of proving seaman status. Consistent with this Court's jurisprudence, the district court properly granted summary judgment dismissing his Jones Act claims, and the Fifth Circuit correctly affirmed the district court's decision. Under these circumstances, Petitioner presents no valid reason for granting certiorari in this case.

At pages 10-13 of his writ petition, Easley further argues that he may maintain a claim under the general maritime law against his employer even if he is not found to be a Jones Act seaman. He contends that he spent some of his time "doing substitute seaman's work," but asserts that he spent no time whatsoever doing "longshoring, shipbuilding, ship repairing, or ship breaking" that would make him an LHWCA employee limited to a compensation remedy against his employer. These arguments are meritless, because the undisputed facts show that Easley was directly involved in shipbuilding and ship repair work.

In his work as a mechanic for Southern, Easley admittedly spent at least 90% of his time repairing his employer's cranes, working in the compressor room, maintaining a drydock, and performing other duties in the shipyard. These activities directly involved him in the work of shipbuilding and ship repairing, even though he may not have personally built or repaired ships himself. The cranes, equipment, and drydock that he maintained and repaired were used in his employer's work of shipbuilding and ship repairing, and he furthered his employer's mission through his land-based job.

In *Alabama Dry Dock & Shipbuilding Co. v. Kininess*, 554 F.2d 176, 178 (5th Cir.), *cert. denied*, 434 U.S. 903 (1977), cited by both courts below, a worker was injured while sandblasting an unassembled crane in a shipyard. He was a "shipbuilder" covered by the LHWCA, because his activity was a necessary prerequisite for use of the crane and because the assembled crane would be directly involved in the shipbuilding process. *Accord*, *Graziano v. General Dynamics Corp.*, 663 F.2d 340 (1st Cir. 1981); *Arbeeny v. McRoberts Protective Agency*, 642 F.2d 672 (2d Cir.); *cert. denied*, 454 U.S. 836 (1981); *White v. Newport News Shipbuilding & Dry Dock Co.*, 633 F.2d 1070 (4th Cir. 1980); *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 841 F.2d 1085 (11th Cir. 1988). Easley's duties in maintaining his employer's equipment, including cranes and a drydock, dictate the same result in this case. The courts below therefore correctly held that he was an employee covered by the LHWCA. Again, Petitioner presents no compelling reason for this Court to review a well-reasoned summary judgment fully warranted by the facts and the controlling law.

CONCLUSION

The decisions of the district court and the Fifth Circuit are consistent with this Court's requirements for seaman status and summary judgment set forth in *Gizoni*, *Wilander*, and other established Supreme Court jurisprudence. Easley's writ application presents no meritorious reasons for granting certiorari. The Fifth Circuit's decision does not conflict with any decision of this Court or of any other United States Court of Appeals on the matters presented in this case. Nor does this case present any unsettled or important question of law that this Court has not already decided. For the reasons discussed above, Respondent, Southern Shipbuilding Corporation, respectfully submits that this Court should deny Petitioner's request for a writ of certiorari.

Respectfully submitted,

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